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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of JOHN URIOSTEGUI and ANGEL MAFFEI.	B259700
JOHN G. URIOSTEGUI, Respondent, v. ANGEL MAFFEI, Appellant.	(Los Angeles County Super. Ct. No. YD054403)

APPEAL from an order of the Superior Court of Los Angeles County, Glenda Veasey, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Jeff Dominic Price for Appellant.

Klopert and Ravden, Debra E. Ravden and Brian K. Fong; Benedon & Serlin, Gerald M. Serlin and Wendy S. Albers for Respondent.

INTRODUCTION

Following the dissolution of her marriage to John Uriostegui, Angel Maffei appeals from a postjudgment order denying her request to modify an order for child support. Because the trial court did not apply the proper criteria in ruling on the request, we conclude the court abused its discretion by denying the request for modification. Therefore, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Marriage and Dissolution*

Maffei and Uriostegui married in October 2004. They have twin sons, born in August 2006. In July 2008 Uriostegui filed a petition for dissolution of the marriage.

On November 30, 2011, pursuant to a stipulation between the parties, the trial court ordered Uriostegui to pay monthly child support in the amount of $6,200 ($3,100 per child). In March 2012 the court signed a "stipulation and order re partial settlement" that provided for equal custody of the children, child support in the amount previously ordered, and, pursuant to the parties' premarital agreement, $2,500 in monthly spousal support for Maffei for three years. On June 25, 2013 the trial court entered a stipulated judgment of dissolution. The judgment provided for $2,500 in monthly spousal support for Maffei through September 2013 and child support in the amount previously ordered.

B. *Maffei's Request to Modify Child Support*

On March 18, 2014 Maffei filed a request for an order modifying child support.[1] In her supporting declaration, she stated that, when the parties originally stipulated on November 30, 2011 to monthly child support for the twins of $6,200, which amount the parties later incorporated into the June 25, 2013 stipulated judgment, they based their agreement on their "50/50 timeshare with the children, [Uriostegui's] 2010 W-2, which indicated that he earned $683,206 in 2010, and [Uriostegui's] reported gross monthly income of approximately $68,000 per month." Maffei contended, however, that after entry of the judgment, Uriostegui's income nearly doubled. She attached a 2013 W-2 form stating that his income was $1,304,050.76 that year. Meanwhile, she asserted that her total income had decreased because she was no longer receiving spousal support. She stated, "Except for [Uriostegui's] increased income, and my loss of spousal support, all other factors remain basically the same as they were when the child support order for $6,200.00 per month was issued on November 30, 2011." Referring to the statewide uniform guideline for determining child support in Family Code section 4055,[2] Maffei stated, "I request that the Court recalculate guideline child support based upon [Uriostegui's] significant increase in income."[3]

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1 Maffei also sought attorneys' fees, but she does not appeal the court's ruling on that request.

2 Statutory references are to the Family Code.

3 On a form requesting the modification, Maffei also checked the box, "I request support based on the child support guidelines."

In opposing Maffei's request for modification of child support, Uriostegui argued, among other things, that there was "no change of circumstances and no basis to modify the current child support order" because the income reflected on his 2013 W-2 form was not representative of his future income. He also asserted that, if the court were to calculate the statutory guideline amount using the income figures Maffei suggested, her child support would increase to $9,175 per month. He argued that section 4057, subdivision (b)(3), authorized the court to deviate downward from that guideline amount to the existing monthly amount of $6,200 because he had "an extraordinarily high income" and the existing child support amount met the children's needs. Uriostegui stated in his declaration that the children's needs had not changed since the entry of judgment, the children's reasonable material needs were met, and the children enjoyed the same "amenities of life," friends, and activities when they were with Maffei as they did when they were with him.

In her reply declaration, Maffei asserted that, because Uriostegui was "not a high wage earner under the law," their respective standards of living were not relevant, and Uriostegui should pay "guideline support based on his actual income." Nevertheless, Maffei disputed the suggestion that the children enjoyed the same standard of living when they were with her as they did when they were with Uriostegui. She noted that at her home the children shared a bedroom, while at Uriostegui's house they had their own rooms; she could not afford to buy them the latest technology items and toys, as Uriostegui did; and she could not afford to take them on vacations or other family trips, while Uriostegui took them on "elaborate vacations" to Hawaii, Costa Rica, and other places.

On August 19, 2014 the trial court held a hearing on Maffei's request, and the following day the court denied the request. The court stated: "The moving papers and declarations of [Maffei], nor the arguments of counsel allege that the existing order does not continue to meet the needs of the minor children. [Maffei's] declaration . . . confirms that there have been no changes since entry of the current order, except the alleged increase in [Uriostegui's] income, and the termination of [Maffei's] spousal support, specifically stating that '. . . all other factors remain basically the same[.'] The Court notes that [Uriostegui] enjoys an extraordinarily high income, such that the focus of the Court must be on the needs of the children, not [on] the increases and[/]or decreases in [Uriostegui's] income. [¶] The existing child support order, contained in the June 25, 2013 stipulated judgment, specifically states that ' . . . the needs of the children will be adequately met by the stipulated amount[.'] Further, such stipulated judgment evidences that the imminent termination of [Maffei's] spousal support was known and anticipated at the time such stipulation was entered into. [¶] Accordingly, there is no evidence to indicate that the existing child support order does not continue to meet the needs of the minor children, and [Maffei's] request for modification of child support is hereby denied." Maffei timely appealed.

DISCUSSION

"The standard of review for an order modifying a child support order is well established. '[A] determination regarding a request for modification of a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed

only if prejudicial error is found from examining the record below.' [Citations.] Thus, '[t]he ultimate determination of whether the individual facts of the case warrant modification of support is within the discretion of the trial court. [Citation.] The reviewing court will resolve any conflicts in the evidence in favor of the trial court's determination.'" (*In re Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1233-1234; accord, *In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 640.) "A family law court abuses its discretion if it applies improper criteria or makes incorrect legal assumptions." (*Ellis v. Lyons* (2016) 2 Cal.App.5th 404, 415; accord, *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1497; see *Farmers Ins. Exchange v. Superior Court* (2013) 218 Cal.App.4th 96, 106 ["[i]f the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law"]; *Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493 [""[a] trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand""].)

Maffei challenges the trial court's denial of her request for modification of child support on several grounds. The dispositive issue, however, is one on which we requested and received supplemental briefing: Did the trial court err by denying Maffei's request for a modification of child support without determining whether Uriostegui's income had increased (and, if so, by how much) since entry of the stipulated judgment? We conclude the answer is yes.

With an exception not relevant here,[4] "[t]he statutory procedures for modification of a child support order 'require a party to introduce admissible evidence of changed circumstances as a necessary predicate for modification.'" (*In re Marriage of Williams*, *supra*, 150 Cal.App.4th at p. 1234; accord, *In re Marriage of Stanton* (2010) 190 Cal.App.4th 547, 553; see *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 638 ["'[a]s a general rule, courts will not revise a child support order unless there has been a "*material change of circumstances*"'"]; see generally §§ 3650-3693.) In determining whether there has been a material change of circumstances warranting modification of a child support order, "'the overriding issue is whether a change has affected either party's financial status.'" (*In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 388; see *In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015.) In support of her request for modification, Maffei argued and presented evidence that Uriostegui's income had nearly doubled since entry of the stipulated judgment.

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[4] "If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above." (§ 4065, subd. (d); see *In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015 [section 4065, subdivision (d), "lets either party "'renege" on the stipulation at any time, and without "grounds,"' if the stipulated award is *below* the guideline amount"].) Although Maffei suggests otherwise, the record does not reflect that the amount of child support provided for in the stipulated judgment was below the guideline amount. Nor in the trial court did Maffei argue it was.

The trial court, however, did not determine whether Uriostegui's income had increased as Maffei alleged.[5] Indeed, having noted that Uriostegui "enjoys an extraordinarily high income," the court stated its focus "must be on the needs of the children, not [on] the increases and[/]or decreases in [Uriostegui's] income." The court then denied Maffei's request based on findings that Uriostegui had "an extraordinarily high income" and "there [was] no evidence to indicate that the existing child support order does not continue to meet the needs of the minor children." Those findings, however, do not relate to whether there had been a material change in circumstances, an inquiry in which the "overriding issue" was whether there had been a change in financial status of Uriostegui or Maffei. (See *In re Marriage of Bodo*, *supra*, 198 Cal.App.4th 373 at p. 388.)

In fact, the findings on which the court based its denial related to a separate inquiry: Whether a trial court making an order for child support should deviate from the statutory guideline amount provided for in section 4055. Section 4055 "sets forth a statewide uniform guideline for determining the appropriate amount of child support." (*In re Marriage of Hubner* (2001) 94 Cal.App.4th 175, 183; § 4055.) "The amount of child support established by the formula provided in . . . [s]ection 4055 is presumed to be the correct amount of child support to be ordered." (§ 4057, subd. (a); see *In re Marriage of Sorge*, *supra*, 202 Cal.App.4th at p. 642.) Section 4057, subdivision (b),

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[5] The court observed that Maffei's declaration "confirms that there have been no changes since entry of the current order, except the *alleged* increase in [Uriostegui's] income, and the termination of [Maffei's] spousal support." (Italics added.) The court did not determine whether Maffei's allegation was true.

provides that, in certain circumstances, the presumptively correct amount under section 4055 "may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case." (§ 4057, subd. (b).) One such circumstance is where "[t]he parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children." (§ 4057, subd. (b)(3); see *In re Marriage of Bodo*, *supra*, 198 Cal.App.4th at pp. 385-386 ["[t]he trial court may not depart from the guideline except in the special circumstances enumerated in section 4057, which include the obligor parent's 'extraordinarily high income'"]; *In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 97 ["[a]pplying the guideline formula" where the husband's "option income represents an extremely high dollar amount" was "inappropriate without a finding that the amount ordered would not exceed the children's needs"].)

The trial court thus denied Maffei's request for modification based on considerations appropriate to determining whether the presumptively correct guideline amount of support was rebutted under section 4057, subdivision (b), not on considerations appropriate to whether Maffei had demonstrated a material change in circumstances. Because it applied the wrong criteria, the trial court abused its discretion in denying Maffei's request. (See *Ellis v. Lyons*, *supra*, 2 Cal.App.5th at p. 415.)

Uriostegui reads the trial court's order as "implicitly accept[ing] Maffei's assertion that Uriostegui's 2013 income had increased to $1,304,050.76." He contends the trial court even "recognized . . . the increase in his income would have increased guideline support by approximately $3,000." Uriostegui suggests the trial court nevertheless denied Maffei's request for a

modification because the court "found Maffei failed to show any basis for increasing the parties' stipulated monthly support obligation." Specifically, Uriostegui contends the court found he "was a high wage earner under the law and the needs of the children were adequately met by the existing support order."

There are two problems with Uriostegui's proposed interpretation of the trial court's order. First, in apparently conceding Maffei demonstrated a material change in circumstances, Uriostegui's interpretation effectively renders the court's order an order for below-guideline support under section 4057, subdivision (b). Such an order, however, "'triggers the court's sua sponte obligation to state, in writing or on the record,'" the information identified in section 4056, subdivision (a). (*In re Marriage of Williams*, *supra*, 150 Cal.App.4th at p. 1235; § 4057, subd. (b).) That information includes: "(1) The amount of support that would have been ordered under the guideline formula. [¶] (2) The reasons the amount of support ordered differs from the guideline formula amount. [¶] (3) The reasons the amount of support ordered is consistent with the best interests of the children."[6] (§ 4056, subd. (a).)

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[6] "Section 4057, subdivision (b) expressly permits the court to make an order where application of the guideline formula is 'unjust or inappropriate in the particular case.' But if the court is going to do that, it must comply with the requirement in section 4056 that any deviation from the formula amount be justified either in writing or on the record. Information required includes what the guideline formula is, the reasons for differing from the guideline, and the reason the amount is 'consistent with the best interests of the children.'" (*In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 318.)

The trial court did not state in writing or on the record the information required by section 4056, subdivision (a), and such a failure to do so when ordering below-guideline support is reversible error. (See *In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 318 ["given the facial noncompliance of the judgment with sections 4055 and 4056, the judgment must be reversed and remanded for further proceedings in conformity with those statutes"]; *In re Marriage of Gigliotti* (1995) 33 Cal.App.4th 518, 526 [order reducing child support from guideline amount reversed because, among other things, the trial court failed to state the information required by section 4056, subdivision (a)].) Under Uriostegui's interpretation, the trial court's order would impermissibly "circumvent[ ]the statutory procedures for modification of child support." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 298.)

Second, even assuming Uriostegui's interpretation of the trial court's order were correct, the trial court appears to have required Maffei to establish that a downward departure from the guideline amount was not warranted under section 4057, subdivision (b). This was legal error. Although the party seeking modification of child support "bears the burden of showing that circumstances have changed such that modification is warranted" (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1054), "[t]he parent who invokes [the] high income exception to the guidelines has the burden of proving '"application of the formula would be unjust or inappropriate," and the lower award would be consistent with the child's best interests'" (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1326). (See *S.P. v. F.G.* (2016) 4 Cal.App.5th 921, 930 ["'[w]hen the extraordinarily high earning supporting parent seeks a downward departure from a

presumptively correct guideline amount, it is that parent's "burden to establish application of the formula would be unjust or inappropriate," and the lower award would be consistent with the child's best interests'"].)

Thus, assuming the trial court found a change in circumstances, Uriostegui had the burden to establish that the "high income exception" to the guideline amount applied; Maffei did not have the burden to establish that it did *not* apply. The trial court's analysis, however, focused exclusively on Maffei's showing (or failure to show). The court denied Maffei's request for modification, ruling that "there is no evidence to indicate that the existing child support order does not continue to meet the needs of the minor children." Indeed, as Uriostegui describes it, the court denied Maffei's request because the court "found Maffei failed to show any basis for increasing the parties' stipulated monthly support obligation." But Maffei only had the burden to show a material change of circumstances, which Uriostegui's interpretation of the trial court's order assumes she did. Uriostegui, not Maffei, had the burden to show below-guideline child support was appropriate under the circumstances of the case.

DISPOSITION

The order denying the request for modification of child support is reversed. Maffei is to recover her costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

GARNETT, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.